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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,633	06/13/2001	Bassem M. Demian	176746-3	7621
7590 07/02/2004				
William Squire Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein 6 Becker Farm Road Roseland, NJ 07068		EXAMINER DAHBOUR, FADI H		
		ART UNIT 3743 PAPER NUMBER		
DATE MAILED: 07/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/880,633

Applicant(s)

DEMIAN, BASSEM M.

Examiner

Fadi H. Dahbour

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 12-21 is/are allowed.
6) ☒ Claim(s) 1 and 3 is/are rejected.
7) ☒ Claim(s) 2 and 4-11 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

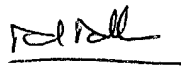
Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/9/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____



DETAILED ACTION

1. The Examiner acknowledges the response filed by Applicant on 04/09/2004. Claims 1-21 are now pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 & 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tapper.

Tapper discloses a bunion correction device comprising means for attaching at least one electrode to the foot for applying an electrical signal (Figures 1-8, also see "electrodes 54 and 56" in lines 8-9 of column 6, also see "alternative embodiments... the feet" in lines 10-12 of abstract), and signal generator means for generating the electrical signal and applying the generated signal to the at least one electrode (see "source of electrical power and appropriate controls for delivering electrical power to the electrodes" in lines 4-6 of abstract), wherein the generating means includes means for applying a generated signal to two electrodes (see "pair of electrodes" in line 3 of abstract, also see "source of electrical power and appropriate controls for delivering electrical power to the electrodes" in lines 4-6 of abstract).

Tapper lacks the electrical signal being applied to the abductor digiti minimi brevis muscle. It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the electrical signal being applied to the abductor digiti minimi brevis muscle, because it is dependent on the particular needs of the user.

Response to Arguments

4. Applicant's arguments with respect to claims 1 and 3, have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

5. Claims 2, 4-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


6. Claims 12-21 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 703-306-5479. The examiner can normally be reached on M-F, 9am-5:30pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Fadi H. Dahbour
Examiner
Art Unit 3743